

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.753 OF 2004
FROM
ARBITRATION PETITION NO.169 OF 2004

Vijay A.M. of Pune ..Appellant.
(Orig.Petitioner)

Vs.

Mrs.Badjate and Associates
Pune & Ors. ..Respondent.
(Orig.Plaintiff)

None for the Appellant.

Mr.G.R.Kinkhabwala i/b.Auroona Law for the
Respondent.

CORAM: A.P.SHAH AND
S.J.VAZIFDAR, JJ.

DATED: 1ST FEBRUARY, 2005

P.C. :

Heard Advocate.

2. The short question is whether the Arbitration Petition was barred by limitation. The award was passed on 1.8.2003 and it was served on the Appellant on 16.8.2003. Admittedly, the Petition was filed on 27.2.2004 i.e. after the statutory period of three months and the grace period of one month. The learned counsel for the Appellant,

however, contends that the Appellant had applied for correction of the award under section 33 of the Act on 20.8.2003 and that application came to be disposed only on 22.11.2003 and the date of rejection of the Application has to be taken as a starting point of the application in view of the provisions of section 33(3) of the Act and, therefore, the Petition was within limitation.

3. We find absolutely no substance in the submission of learned counsel. Section 33 of the Act provides that the application under that section can be made either for correction of clerical or typographical errors or to make an additional award on a claim for consideration by the Arbitral Tribunal. On a bare perusal of the application made by the Petitioner, it is seen that the said application was, in substance, application for renewal and not an application for grant of award or for seeking award on additional claim. The Arbitral Tribunal therefore has correctly rejected the application by observing that the same does not fall within the ambit of section 33. Consequently, section 33 of the Act has no application in the facts of the present case.

4. In any event, it is clear that the application was not filed within a period of three months from the date of the rejection of the so called application under section 33 and, therefore, it was obligatory on the Petitioner to prefer the application for condonation of delay. That application was also not made. Therefore, the learned Single Judge has rightly held that the Petition was barred by limitation.

The Appeal is dismissed.